Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-63

RICHARD D. COOPER,

Petitioner,

vs.

STATE TAX COMMISSION OF UTAH,

Respondent.

Petition for Writ of Certiorari To The Supreme Court of Utah

RICHARD D. COOPER

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St. George, Utah 84770

Petitioner Pro se

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

_____

No._____

_____

RICHARD D. COOPER,

Petitioner,

vs.

STATE TAX COMMISSION OF UTAH,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF UTAH

Petitioner prays that a Writ of Certiorari issue to review the Decision of the Supreme Court of Utah filed March 21, 1977.

DECISION BELOW

The docket entry was filed and no decision was rendered upon dismissal of Petitioner's issued and signed Writ of Certiorari. A copy is appended, Appendix D. No decision was rendered upon the denial of Petitioner's Petition for Rehearing. A copy is appended, Appendix E.

JURISDICTION

The docket entry granting Respondent's Motion to Dismiss Writ of Certiorari was filed March 21, 1977. The Writ of Certiorari as issued and signed on February 23, 1977, was then dismissed. A timely Petition for Rehearing was denied on April 11, 1977, without decision. This Petition for Certiorari was filed within 90 days after April 11, Rule 13 (1). This Court has jurisdiction under 28 U.S.C., 1257(3) and by virtue of Appendix "C", herein which supplies proof that Federal questions were raised in state court, and International Harvester Co. v Missouri (1914) 234 US 199; 58 L Ed 1276, and thru compliance with Rule 19 1(a) and close heed to Rule 23. Petitioner asserted below and asserts here the deprivation of rights secured by the Constitution of the United States, Amendments 1, 5, 7 & 14. The procedure below, in a quasi-judicial proceeding (see Appendix "A" and "B") as practiced by the Respondent against the Petitioner and as enforced thru Chapter 14A of Title 59, U.C.A. (1953) generally and Paragraph 77 specifically against the Petitioner (see Appendix "D" and "E") is repugnant to the U.S. Constitution. In such a State case which denys "facts", "shocks the sense of fairness", "restraints access to the courts" and"burdens challenge to the law" in a way not in accord with applicable decisions of this Court -- does warrant consideration as special and important reasons for granting review pursuant to Rule 19 1(a).

QUESTIONS PRESENTED

INTRODUCTORY
BASIS FOR "QUESTIONS" PRESENTED FOR REVIEW

A. State legislation and associated construction denies petitioner right to his day in court by creating unreasonable and destructive bar against judicial branch review of debt determination by a tax commission.

B. Petitioner alleges that due process has been denied to him, in that:

1. respondent admits having no facts.

2. respondent made debt determination with no facts as basis.

3. with no facts, there is no "evidence".

4. with no evidence, a $2,172.94 Decision was Ordered, Adjudged and Decreed

5. a "conviction" was therefore obtained with no judically acceptable evidence -- thus due process is denied petitioner.

GRAVAMEN

A. Does the Utah Supreme Court Decision in denial of petitioner's Writ of Certiorari do violence to petitioner's rights:

1. to peaceably assemble before and to petition the Judicial Branch for a redress of grievances under the 1st Amendment?

2. to seek due process of law in a quasi-judicial tax hearing in the preservation of private property under the 5th Amendment?

3. to seek the right of trial and to be heard by a common judge in a controversy where the value exceeds twenty dollars under the 7th Amendment?

4. to seek the privileges as a citizen of the United States and the equal protection of the laws under the 14th Amendment?

B. Is the Supreme Court of Utah Decision in accord with applicable Decisions of this Court?

C. Where Utah and United States law provides a reasonable right to a Judicial Branch Court:

1. Would not a State law which causes a purposeful and/or oppressive delay to the orderly process of obtaining at least one (1) hearing in a Judicial Branch Court be a violation of US law?

2. Would not a State law which permits a state agency to arbitrarily determine debt liability in a quasi-judicial setting without need of fact or knowledge of fact or information and thereafter to require that said amount be paid or deposited as a condition precedent to at least one (1) hearing in a Judicial Branch Court be a violation of US law?

3. Would not a State law which, in an effort to prevent any inquiry into the validity of a particular statute, so burdens any challenge thereof in the courts that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed - become a serious question whether the party is not deprived of the equal protection of the US law?

CONSTITUTIONAL PROVISIONS INVOKED

U.S. CONST. 1st Amend.:
Congress shall make no law respecting...the right of the people to peaceably assemble (in courts) and to petition the Government (in courts) for a redress of grievances.

U.S. CONST. 5th Amend.:
No person shall...be deprived of life, liberty, or property, without due process of law (in a quasi-judicial tax hearing);

U.S. CONST. 7th Amend.:
In Suits at common law, where the value in controversey shall exceed twenty dollars, the

right of trial (due process)...shall be preserved.

U.S. CONST. 14th Amend. Sec. 1:
...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF CASE

Petitioner is a citizen of the United States.

On August 22, 1974, the respondent prepared a TC-302 debt liability determination, after an investigation and audit of the petitioner, for the petitioner pursuant to U.C.A. (1953) 59-14A-52(b)(1) wherein the impowered respondent "shall make such return from its own knowledge and from such information as it can obtain through testimony or otherwise." (see Appendix "A")

Thereafter the petitioner raised Federal questions in the quasi-judicial proceedings in the manner and methods illustrated in part below as are now being sought to be reviewed by this court. (Appendix "F")

On October 5, 1974, Certified Mail, letter, to-wit: "...I simply want to petition or appeal my grievance in a lawful manner...as Utah law seemingly requires, while preserving my constitutional rights,..."

On November 26, 1974, Certified Mail, Formal Request for Departmental Conference, "authorities relied upon for Adjudication of Questions. e. The Constitution of the United States of America; f. (11 cited U.S. cases protecting rights to 1st, 5th, 7th, 14th Amendments and others)".

On May 21, 1975, Certified Mail, Affidavit: "...That the entire information constitutes the information that was relied upon...to maintain those rights secured under the Constitution of the United States."

On August 5, 1975, Transcript of Proceedings, Page 7, line 25: "(By Mr. Cooper): I am also relying upon the State Commission Code of Administrative Procedures, 1967," (On page 8, line 9) "...and this is official notice--Commission shall take official notice that the laws of the United States, and the laws of the State of Utah, and the rest of the items listed there. These are basic." (see Appendix "F")

On August 28, 1975, Letter to Respondent: "Is the Utah Tax Commission Court or the Utah Judicial District Court subject to the United States Supreme Court such as in the following case? (Slochower v Board of Higher Education of City of New York, 76 S Ct 637; 350 US 551; 100 L Ed 692)

On September 8, 1975, Letter from Assistant Attorney General, Michael L. Deamer, to-wit: "ANSWER: Yes, where the case is relevant and where applicable....

For 28 months the quasi-judicial proceedings stood mute as to the Federal questions raised before them.

On August 5, 1975, a Formal Hearing was held, the State of Utah acting as plaintiff and the respondent acting as judge, for the purpose of adjudicating debt liability Form TC-302 for 1973 as prepared by respondent's agent, E. W. Kenison. (Appendix "A")

On August 5, 1975, Mr. E. W. Kenison, who prepared Form TC-302, "testified on numerous occasions that he used no information whatsoever,...He simply used no information." It was further stated by Chairman Holman, "He (Mr. Kenison) didn't use any (evidence)." (Appendix "A")

On January 10, 1977, seventeen months after the

Formal Hearing, the respondent rendered Decision #303 which ordered taxes and charges of $2,172.94 which assessments and fines are based on no facts, no information and no knowledge and therefore obtained without any judically acceptable evidence. (Appendix "A" and "B")

The petitioner, throughout the first instance "process" and appeal "process" did raise the issue that the executive branch hearings, therein as submitted to, did not constitute (1) constitutional judicial due process and (2) that jurisdiction in the executive branch had never been obtained by any competant person, body, or agency to the fulfilling of fundamental due process, i.e. the right to be heard by a common judge, and (3) that compliance to administrative process should not be mistaken for yielding the basic constitutional right of having at least one (1) hearing in a judicial branch court - especially when the intent of the compliance was a direct attempt to secure ultimately a minimum of one (1) hearing without oppressive restraints and burden thereto. (Appendix "F" and "C")

On Feburary 8, 1977, a timely Notice of Appeal was filed with the Utah Court.

On February 22, 1977, the petitioner submitted a Memorandum in Support of Petition for Writ of Certiorari.

On February 23, 1977, the Utah Supreme Court issued and signed a Writ of Review for petitioner.

On February 24, [illegible], the respondent filed a Motion to Dismiss Appeal based on two arguments: (1) failure to comply with procedural requirements of timeliness and (2) failure to pay assessments and fines as Ordered in Decision #303 "as a condition precedent to filing for review". Respondent's Motion was not accompanied by a memorandum of authorities in support

thereof as is required by Utah Rules of Civil Procedure, Rule 75 (r) but was accompanied by an affidavit of the respondent which stated: "Mr. Cooper has not made any payment of any kind to the Tax Commission since said Decision (#303) was mailed."

On March 21, 1977, at the hearing to dismiss petitioner's Writ of Review the petitioner submitted a Supplemental Memorandum in Ojection to Utah Code Ann. (1953) 59-14A-77 specifically emphasising the Federal questions sought to be reviewed as raised in the Utah Court. (Appendix "C")

On March 21, 1977, the Utah Supreme Court granted respondent's Motion to Dismiss petitioner's Writ of Review and no decision was rendered.(Appendix "D")

On April 7, 1977, petitioner filed a timely Petition for Rehearing.

On April 11, 1977, the Utah Court denied Petition for Rehearing and no decision was rendered upon said denial. (Appendix "E")

On May 23, 1977, petitioner notified parties of Notice of Intent to Appeal to the U.S. Supreme Court.

In such a State case which denys "facts", "shocks the sense of fairness", "restraints access to the courts" and "burdens challenge to the law" in a way not in accord with applicable decisions of this Court -- does warrant consideration as special and important reasons for granting review pursuant to Rule 19 1 (a).

HOW THE FEDERAL QUESTIONS WERE
RAISED AND DECIDED BY BELOW

1. See Page 5, Statement of Case, paragraphs 2 thru 8
2. See Appendix F, A, B, C, D, E

REASONS FOR GRANTING THE WRIT

POINT I

THE COURT BELOW IGNORED THE 1st, 5th, 7th and 14th AMENDMENTS AND HAS THEREBY DENIED TO PETITIONER ALL OF HIS RIGHTS THEREUNDER.

All governments have established methods of procedure, respecting taxation, different from that pursued in judicial courts, and following of that different method has always been regarded as "due process of law" by that government.

However, the respondent and the State of Utah is subject to Federal Constitutional law and specifically in all cases which materially affects the substantial rights of each petitioner and especially where there is no adaquate or prudent remedy or appeal from such trespasses.

> Under the Fourteenth Amendment (US) the legislature is bound to provide a method for the assessment and collection of taxes that shall not be inconsistent with natural justice. Turplin v. Lemon, 187 US 51, 60.

It must be argued that the Utah Constitution has conferred power and duty upon the Utah Supreme Court to provide a forum where parties at controversy may reasonably, without undue burden, submit facts "before the decision maker so that the decision maker can sift through the facts, weigh the evidence and reach the appropriate conclusion." in accordance with the US Const. 5th Amend. (Ponce v Housing Authority of Tulare County, 389 F Supp 635

Whatever power the Utah legislator may have granted the respondent it could not grant the respondent authority to abolish mankinds time tested common

law judicial tests of admissability of evidence in name of due process of law. An Illinois case points out that a law or procedure is due process of law only when "they do not conflict with the fundamental principles of liberty and justice which lie at the base of all civil and political institutions." (Bute v Illinois, 333 US 640, 92 L Ed 986)

History reveals that every jew put to death by Hitler was killed lawfully. The acceptable rules of due process were undoubtly met with one basic exception. The rules of evidence were the controling factor which determined what facts or theories would be necessary to condem the jew to death.

The petitioner importunes this Court to consider what took place on August 5, 1975 at the Formal Hearing which was the culmination of eleven months of correspondence, meetings and conferences. "The purpose of this hearing is to determine if the amount that has been assessed against (Mr. Cooper) is correct or incorrect." reads the official transcript of that hearing. (Appendix A-4)

"(The petitioner) is asserting that if you want to estimate an asserted deficiency against him you would have to do it on the basis of the information in your possession..." (Appendix A-4)

Mr. Kenison, the tax auditor who prepared the debt assessment against the petitioner was being cross-examined as to what evidence he used to prepare the estimate. "(Chairman Holman to Mr. Cooper): I think you're belaboring the point. He (Mr. Kenison) answered that three or four times. He answered it was an estimate....He (Mr. Kenison) didn't use any (evidence). (Appendix A-1)

The State's attorney minutes later said: "Mr. Chairman, I think I'm going to object to this line of questioning. I think Mr Kenison has testified

on numerous occassions that he used no information whatsoever...whatever it may be. He simply used no information." (Appendix A-3)

The above testimony, sworn under oath as true, is indicative of what is strangely referred to by the respondent as "otherwise" evidence. It is important to note here that both the Utah Assistant Attorney General as well as the Chairman of The Utah State Tax Commission knowingly thereafter did Prepare, Order, Adjudge, and Decree Decision #303, amounting to $2,172.94 in taxes and charges, based on a debt determination prepared by the respondent who used no facts, testimony, knowledge, information or evidence to assess the tax liability. (Appendix B)

> Giving an executive officer unfettered power or discretion amounts to judicial power and is unconstitutional. Schecorce Poultry Co v US, 295 US 495; 55 S Ct 837
> United States v Sharpvack, 355 US 286, 78 SCt 291

The respondent has available to them the normal discovery processes for the purpose of securing information upon which to make a bonafide legal estimate. That however, is an executive branch decision and has no bearing unless--ultimately a judicial review occures wherein the lawfulness of such determination must be found to be based on something substantive--rather than a mere "estimate" founded upon a dream, intuition, imagination, osmosis, or hearsay via a stray carrier pigeon.

The Utah Court erred in not reviewing petitioner's claim to violations of U.S. Const's 1st, 5th, 7th, and 14th Amendments by quasi-court action in the first instance.

REASONS FOR GRANTING THE WRIT

POINT II

THE UTAH COURT ERRED IN NOT REVIEWING A STATE LAW WHICH CAUSED A PURPOSEFUL AND/OR OPPRESSIVE DELAY TO THE ORDERLY PROCESS OF OBTAINING AT LEAST ONE (1) HEARING IN A JUDICAL COURT

The United States Supreme Court has referred to "the right to be heard" as "one of the most fundamental requisites of due process" (Schroeder v New York City (1962) 371 US 208; 9 L Ed 2d 255, 259) Again it has stated: "A fundamental requirement of due process is the opportunity to be heard" (Armstrong v Manzo (1965) 380 US 545, 14 L Ed 2d 62,66)

Both Federal and State constitutions place a limitation upon the legislature to prevent that branch of the state government from closing the doors of the courts against any person who has a legal right which is enforceable in accordance with some known remedy.

> Utah Code Ann. (1953) 59-14A-77 "Before making application to the Supreme Court for a writ or review, the full amount of the tax, interest and other charges stated in the determination or decision of the tax commission, must be deposited with the tax commission..."

The above statute in this case is clearly in conflict with 1st, 5th, 7th and 14th Amend. rights and so burdens any challenge thereof in the courts —that it is oppressive in nature and ignors the special or important reason for which one may wish to petition the court's discretion on the issue.

> The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity;

> otherwise the right might be but a barren one. Morgan v US, (1938) 304 US 1, 82 L Ed 1129

The right to an open court is further placed under oppressive limitations by Utah paragraph "77" because (1) the application for review must be made to the Supreme Court rather than to courts of general jurisdiction which more than doubles the cost of challenge and (2) the petitioner was ordered to pay a 300% fee, which he could not do, to obtain one (1) hearing in a judicial court prior to asking the court to open its doors for a review. The fact that one must be penalized and pay judgment prior to the establishment of a valid judgment is an attempt to shift the burden of proof and "77" does just that.

The United States Supreme Court has struck down state statutes unfairly shifting the burden of proof. In the leading case of Speiser v Randall (1958) 357 US 513, 2 L Ed 2d 1460. the Supreme Court ruled that the state could not take away a tax exemption without itself bearing the burden of persuasion to show that the taxpayer engaged in criminal speech. California law "which places the burden of proof and persuasion on the taxpayer is a violation of due process", said the Court in a companion case. (First Unitarian Church v County of LA (1958) 357 US 545, 2 L Ed 2d 1484, 1486)

> The guaranty of due process reflects traditional notions of justice. Secy of Arig. v Central Roig Refining Co. 338 US 604

> The due process guaranty bars congress from enactments that "shock the sense of fair play." Calvin v Press, 347 US 522; 98 L Ed 911

REASONS FOR GRANTING THE WRIT

POINT III

THE UTAH COURT ERRED IN DENYING PETITIONER FEDERAL "MINIMAL DUE PROCESS" -- PRIOR TO SEIZURE OF PETITIONER'S PROPERTY

U.C.A. (1953) 59-14A-77, supra, which imposes restrictive conditions "precedent" to review -- possesses an effective and destructive bar to the average citizen who may wish to be heard in a judical branch court.

Paragraph "77" presupposes that such "requisite sum" as required -- has been adjudicated within the limitations of Federal "minimal due process"...that the doors of fact finding into the Government's case have in effect always been open...throughout all prior proceedings which were used to establish such "requisite sum."

Paragraph "77" presupposes that a fair opportunity to repel an unjust "requisite sum" -- thru fact or law -- had previously been available.

Paragraph "77" presupposes that the petitioner is not being deprived of property in the pre-payment or deposit of such "requisite sum" -- as the petitioner had been lawfully decreed a judgment debtor within the meaning of Federal "minimal due process".

Paragraph "77" is a law which implies a presumption that Federal "minimal due process" exist in the prior preparation of all disputed debt liability determinations by the respondent -- where in fact no rational connection to actual available Federal minimal due process of law exists.

> A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it violates the due process clause of the Fourteenth Amendment. Legislative fiat may not take the place of fact in the judicial determination of

> issues involving life, liberty or property. Western & A.R.Co. v Henderson (1929) 279 US 639; 73 L Ed 884.

Utah's Title 59 Section 14A generally provides no confrontation for reasonable fact finding into the Government's case by the citizen. Since the right to confrontation mentioned in the Sixth Amendment is limited to criminal prosecutions, the right in civil cases must be posited upon the due process of law clauses in the 5th and 14th Amends.

The U.S. Supreme Court has well said:

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. Green v McElroy (1959) 360 US 474; 3 L Ed 2d 1377

Recourse is necessary to this Court by Certiorari for relief because the Utah Courts have denied the petitioner Federal Rights to "minimal due process" to be heard, "minimal due process" to fact find the Government's case, and "minimal due process" to repel an oppressive statute prior to warrant, levy and seizure of property as now threatens petitioner and his family.

REASONS FOR GRANTING THE WRIT

POINT IV

STATE RESTRAINTS UPON THE ACCESS TO THE COURTS SHOULD BE INVALIDATED WHEN SO ARBITRARY, UNEQUAL AND OPPRESSIVE AS TO

SHOCK THE SENSE OF FAIRNESS IN VIOLATION OF EQUAL PROTECTION UNDER THE LAW.

The petitioner herein seeks relief from an arbitrary, unequal and oppressive burden placed upon him by two or more Utah laws in his attempt to secure jurisdiction in a judicial branch court which was denied to him by the Utah Court.

> U.C.A. (1953) 59-14A-76(b) "No court of this state, except the Supreme Court, shall have jurisdiction to review...any decision of the tax commission..."

U.S.A. (1953) 59-14A-77, supra.

U.C.A. (1953) 59-14A-76(b) places a destructive bar to petitioner's right to judicial process and provides a base for paragraph "77" in that (1) petitioner is denied access to every court of general jurisdiction from hearing any controversy involving the respondent's damaging acts against the petitioner and (2) petitioner is denied process right to appeal in every State Court involving the respondent's damaging acts (decisions) against the petitioner and (3) said right to appeal has been limited to a wholly discretionary privilege from the Court designated "Petition for Review". All are destructive of Federal "minimal due process" of equal protection under the law.

In the instant case the petitioner was required by statute to pay the respondent, in the executive branch, an arbitrarily determined "requisite sum" of $725.88 for tax plus $1,447.06 for other charges -- which amounted to a 200% restraint above the tax for the right to at least one (1) hearing in a judicial branch court - to secure the right in the 1st instance - to challenge the validity of the $2,172.94 arbitrary "requisite sum" which petitioner could not pay

> But when the legislature, in an effort to prevent any inquiry of the validity of a particular statute, so burdens any challenge thereof in the courts that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the party is not deprived of the equal protection of the laws. Cotting v Kansas City (1901), 183 US 79, 102; 46 L Ed 92.

In 1908, the U.S. Supreme Court in effect held that due process of law was violated "When the penalties for disobedience are by fines so enormous and imprisonment so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation. Ex parte Young (1908) 209 US 123; 52 L Ed 714

> Generally speaking, it can be said that state restraints upon access to the courts will be invalidated when so "arbitrary, unequal and oppressive" as to"shock the sense of fairness the Fourteenth Amendment was intended to satisfy..." Chicago & N.W.R.Co. v Nye Schneider Co. (1922) 260 US 35; 67 L Ed 115, 123.

REASONS FOR GRANTING THE WRIT

POINT V

THE PETITIONER HAS NEVER RECEIVED HIS DAY IN COURT AND SHOULD RECEIVE A JUDICIAL BRANCH HEARING - NOT BECAUSE HE SUBMITTED TO ALL ADMINISTRATIVE PROCEDURE REQUIRED BY STATUTE - BUT BECAUSE JURISDICTION THEREIN HAD NEVER BEEN ESTABLISHED

It is argued that due process of law is not necessarily judicial process and may include administrative process -- however, all the essential minimal elements of due process must be met even

in a "quasi-judicial" proceeding inorder to meet the test of judicial due process. The over-riding conclusion of the Utah Supreme Court, in outlining minimal due process was that "Due process of law may involve a jurisdictional question," to-wit:

> Failure to obtain jurisdiction may be because the requirements of due process have not been complied with...But if due process has not been followed in the attempt to gain jurisdiction, jurisdiction may never have been obtained. Christiansen v Harris 109 U 1,12; 163 P 2d 314.

For the petitioner to submit to administrative procedure as required by statute does not imply that he admits that, or in fact, jurisdiction has been established within any executive branch quasi-trial. No portion of U.C.A. Title 59 Chapter 14A grants jurisdiction to the executive branch to perform judicial branch functions - but rather provides an orderly process wherein one may ultimately obtain due process in a jurisdictional setting. Proof that petitioner did raise the issue of jurisdiction and due process - and did not acknowledge jurisdiction to the respondent can be seen in the petitioner's Petition For Informal Hearing, filed February 13, 1975, which states:

> Conclusion: Therefore, the above estimated Recomputations, are nothing more than bureaucratic declarations, and if acted upon by the Utah State Tax Commission, would be an acute violation of due process of law resulting in the extinction of civil rights and therefore, are unconstitutional...

Said petitioner denied that jurisdiction had ever been established during the 1st instance trial setting in the executive branch and objected that no competant person, body, or agency could determine the issues pursuant to the respondent's "rules of evidence" upon which knowledge, facts or information would be received as "evidence" for the rendering of a valid judgment. (Appendix "F")

Petitioner objected that the terms "respondent's rules of evidence" and "valid judgment" are not compatable within the true meaning of words in the english language.

> Where taxpayer did raise issue of denial of due process at trial in tax court, the issue was appropriate for appellate consideration. Hayutin v C.I.R., 508 F 2d 462

The Supreme Court ruled also that when a defendant was tried in a revenue-raising court by an Agent of the Legislative City Council it violated due process under the 14th Amendment as defendant was entitled to be tried by an impartial judge - one not beholden to the Legislative Branch of Government - "in the first instance."

> Petitioner was denied a trial before a disinterested and impartial judicial officer as guaranteed by the Due Process Clause of the Fourteenth Amendment where he was compelled to stand trial for traffic offense before the mayor, who was responsible for village finances and whose court through fines, forfeitures, costs and fees, provided a substantial portion of village funds. A statutory provision for the disqualification of interested or biased judges did not afford petitioner a sufficient safeguard, and it is of no constitutional relevance that petitioner could later be tried de novo in another court, as he was entitled to an impartial judge in the first instance. Ward v Village of Monroeville, U.S. Supreme Court No. 71-496, November 14, 1972.

CONCLUSION

Petitioner prays that the Petition for a Writ of Certiorari be granted. The Decision below is not in accord with applicable Decisions of this Court, Rule 19 (a), i.e. supra, Ward, Chicago, Young, Cotting, Green, Western, Calvin, Secy of Arig, First Unitarian, Speiser, Morgan, Armstrong, Schroeder, Sharpvack, Schecorce, Bute, Turplin, Slochower, and International Harvester.

Respectfully submitted,

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345 South Main Street
St. George, Utah 84770
Petitioner Pro se

CERTIFICATE OF MAILING

A copy of the foregoing Petition was posted in the United States mail postage prepaid first class wherein all parties required to be served have been served.

Richard D. Cooper

Appendices

APPENDIX A

BEFORE THE UTAH STATE TAX COMMISSION

UTAH STATE TAX COMMISSION, No. 1037

vs. TRANSCRIPT OF PROCEEDINGS

RICHARD D. COOPER. (Morning Session)

BE IT REMEMBERED that on the 5th day of August, 1975, the above-entitled matter came on for hearing before Vernon L. Holman, Chairman...

Page 33, line 8

(Question by Mr. Cooper to Mr. E. W. Kenison, Auditor for Comm.): Mr. Cooper asked you another question at that conference. "The recomputation of income tax forms TC-302 which was served upon me indicated the Tax Commission did estimate an income for me of...$11,500 for 1973, even though I had no gross total income for 1970 and less than $8,000 for the entire three years of 1967, 1968, and 1969 combined. Are not the three estimates inconsistent with all facts and theories related to my circumstances in this instance?"

Would you please correct the record if this was not your answer: "No, we assume everyone is making enought money to pay taxes."

Page 48, line 1

(Chairman Holman to Mr. Cooper): I think you're belaboring the point. He (Mr. Kenison) answered that three or four times. He answered that it was an estimate.

MR. COOPER: The law seems to me that it covers many facets of evidence. We want to be all-inclusive to make sure we have all of the types of evidence he (Mr. Kenison) used here.

CHAIRMAN HOLMAN: He (Mr. Kenison) didn't use any (evidence).

Q (By Mr. Cooper to Mr. Kenison) What demonstrative evidence did you use?

MR. DEAMER (Michael L. Deamer, Assistant Attorney General for Tax Comm.): I might insert an objection here to the nature of the question, the form of the question that has been asked. Mr. Cooper is referring to "evidence" rather than "information," and we may ultimately end up in an argument of whether the statute requires evidence or whether it requires information. My objection goes to the form of the question. If he wants to ask what information did you use rather than what evidence, because I believe there is a difference between "information" and "evidence."

Q (By Mr. Cooper) What real information did you use?

A (By Mr. Kenison) No information.

Q What demonstrative information did you use?

A None.

Q What legal theories did you use in the preparation of these three estimates (TC-302s)?

A Just following the provisions given for the Utah state law.

Q What theory is that?

A That we may estimate.

Q All right. What information of substance within the department's files did you use?

A None

Q What direct information did you use from any source, to your knowledge?

A None

Q What testimony from others did you use?

A None

Q What knowledge otherwise available to the Commission in a normal discovery process did you use?

A Just estimated the income. That's all.

Q That would be none, is that right?

A Yes.

Q What circumstancial information did you use?

A At the time this report was written, none.

Q What hearsay information did you use?

A None.

Q What privileged information did you use?

A None.

Q What information of probative value did you use?

A What does that mean?

MR. DEAMER: Mr. Chairman, I think I'm going to object to this line of questioning. I think Mr. Kenison has testified on numerous occasions that he used no information whatsoever, whether it was probative, hearsay, privileged, unprivileged or whatever it may be. He simply used no information. I'm going to object to this line of questioning. I think we are just belaboring the point.

MR. COOPER: That will be fine.

Q (To Mr. Kenison): Inasmuch as these three estimates--the amounts--are being individually adjudicated by this Commission today, would you please tell this Commission if you possess any reasons why individual estimates should not be individually dismissed for the reason that each was not prepared with sufficient supporting information?

MR. FORDHAM: If I may interject, he (Mr Cooper) is asking the witness to make a determination that the Tax Commission will make here. I think it puts the witness in a bad position.

CHAIRMAN HOLMAN: Well, he (Mr. Kenison) has previously testified when you (Mr. Deamer) had him under oath before that he (Mr. Kenison) thought they ought to be increased, amended upwards.

MR. COOPER: There must be some information which he must have possessed for not wanting those (estimates) dismissed, is this correct?

Page 52, line 24

Q (By Mr. Cooper to Mr. Kenison) So, there are no dependents permitted or allowed on 1973?

A There may be.

Q Was there?

A It isn't listed here

Page 53, line 24

Q (By Mr. Cooper) Mr. Kenison, are you aware at this time (1975) and do you know that Mr. Cooper has claimed nine...dependents?

A Only per your statement.

Q You have received no information through tax forms indicating that amount?

A It shows on the unacceptable returns that we received (for 1973)--that is, the unacceptable documents--that number of dependents, yes.

Page 62, line 20

MR. COOPER: May we have Mr. Deamer make a legal opinion on what the purpose of this hearing is today? Would that be proper?

CHAIRMAN HOLMAN: If you so desire.

MR. DEAMER: I believe the purpose of this hearing is a petition for a redetermination of a deficiency that has been assessed against Mr. Cooper. Mr. Cooper is asserting that if you want to estimate an asserted deficiency against him you would have to do it on the basis of the information in your possession and apparently it's implied that he is going to assert that he does not owe any income tax.

The basis for this document that he is offering is either to repute or show that we did not have any information in our possession to make an assessed deficiency against him, or, if we did, is this assessed deficiency against him too high based on the information that we had: and it's relevant to that degree.

The purpose of this hearing is to determine if the amount that has been assessed against him is correct or incorrect.

CHAIRMAN HOLMAN: Do you agree with that, Mr. Cooper?

MR. COOPER: Yes...

APPENDIX B

BEFORE THE UTAH STATE TAX COMMISSION

UTAH STATE TAX COMMISSION	DECISION
v	
RICHARD D. COOPER	No. 303

The matter of the Petition for Redetermination of the deficiency of Richard D. Cooper of 345 South Main, St. George, Utah, came on regularly for hearing before the Utah State Tax Commission, and Richard D. Cooper appearing on behalf of himself, and Michael L. Deamer, Assistant Attorney General appearing on behalf of the Utah State Tax Commission, and the Findings of Fact and Conclusions of Law have been signed and entered herewith, NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that said Richard D. Cooper of St. George, Utah, who with intent to evade taxes and the lawful requirements of the Utah State Tax Commission in violation of Chapter 14A of Title 59, U.C.A. (1953), has failed to make and render a return, to supply information, and to pay taxes for the taxable year 1973, and, as such is hereby assessed and fined a civil penalty of $1,000.00 is addition to taxes estimated to be in the amount of $724.88, plus penalties of $181.22, plus interest on the unpaid taxes from the date said taxes were due and owing at six percent until paid. Mr. Richard D. Cooper is hereby ordered to pay the same forthwith.

Dated this 10th day of January, 1977.

UTAH STATE TAX COMMISSION

/s/ Vernon L. Holman
/s/ Paul T. Fordham
SEAL /s/ R. Milton Yorgason
/s/ Eleanor Lee Brennan

APPENDIX C

Richard D. Cooper Pro se
345 South Main Street
St.George, Utah 84770

IN THE SUPREME COURT OF THE STATE OF UTAH

Richard D. Cooper,
Plaintiff-Petitioner, SUPPLEMENTAL MEMORANDUM IN OBJECTION TO 59-14A-77 AS A DENIAL OF DUE PROCESS

vs,

State Tax Comm. of Utah, Civil No. 15028
Defendant-Respondent.

EXCERPT, ARGUMENT IV, Page 3, line 6

THE REQUIREMENTS OF U.C.A.(1953) 59-14A-77 HAVE BEEN PROPERLY OBJECTED TO AS A DENIAL OF DUE PROCESS- AS TO ADVERSELY AFFECTING THE SUBSTANTIVE RIGHTS AND THE REMEDIAL RIGHTS OF THE PETITIONER...

Paragraph 77 is in conflict with the plain meaning of many constitutional provisions of the Utah State Constitution as well as the United States Constitution.

B. No person shall be deprived of property, without due process of law...Art. 5, US Const.

E. No State shall enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor deny to any person within its jurisdiction the equal protection of the laws, Art. 14, US Const.

EXCERPT, Page 4, line 18

In 1901, Justice Brewer for the United States Supreme Court said in Cotting v Kansas City, 183 US 79, 102; 46 L Ed 92.

> But when the legislature, in an effort to prevent any inquiry of the validity of a particular statute, so burdens any challenge thereof in the courts that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the party is not deprived of the equal protection of the laws.

In 1908, the US Supreme Court in effect held that due process of law was violated "When the penalties for disobedience are by fines so enormous and imprisonment so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation." (Ex parte Young (1908) 209 US 123; 52 L Ed 714.)

> Generally speaking, it can be said that state restraints upon access to the courts will be invalidated when so "arbitrary, unequal and oppressive" as to "shock the sense of fairness the Fourteenth Amendment was intended to satisfy...Chicago & N.W.R. Co. v Nye Schneider Fowler Co. (1922) 260 US 35; 67 L Ed 115, 123.

The United States Supreme Court has referred to "the right to be heard" as "one of the most fundamental requisites of due process" (Schroeder v New York City (1962) 371 US 208, 9 L Ed 255, 259.) Again it has stated: "A fundamental requirement of due process is the opportunity to be heard" (Armstrong v Manzo (1965) 380 US 545, 14 L Ed 2d 62,66.)

> The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right might be but a barren one.

Those who are brought into contest with the government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposal before it issues its final command. Morgan v US (1938) 304 US 1; 82 L Ed 1129.

EXCERPT, Page 6, line 5

Compliance to administrative process should not be mistaken for yielding basic constitutional rights - especially when the intent of the compliance is an attempt to secure thoes basic rights.

A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias. _____(1955) 349 US 133 at 136

EXCERPT, Page 7, line 10

A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it violates the due process clause of the Fourteenth Amendment. Legislative fiat may not take the place of fact in the judicial determination of issues involving life, liberty or property. Western & A.R. Co. v Henderson (1929) 279 US 639; 73 L Ed 884.

Utah's Section 14A provides no confrontation for reasonable fact finding into the Government's case by the citizen. Since the right of confrontation mentioned in the Sixth Amendment is limited to criminal prosecutions, the right in civil case must be posited upon the due process of law clauses in the Fifth and Fourteenth Amendments.

Reasonableness of the action depends on fact findings and disclosed evidence to the individual. (Green v. McElron (1959) 360 US 474,496, 3 LEd 2d 1377)

APPENDIX D

SUPREME COURT OF UTAH

March 22, 1977

No. 15028

Richard D. Cooper,
Plaintiff,

v.

Utah State Tax Commission,
Defendant.

This day case remitted to Tax Commission; appeal dismissed March 21, 1977.

Geoffrey J. Butler, Clerk

APPENDIX E

SUPREME COURT OF UTAH

April 11, 1977

No. 15028

Richard D. Cooper,
Plaintiff,

v.

State Tax Commission of Utah,
Defendant.

This day plaintiff's petition for a rehearing on defendant's motion to dismiss writ denied.

Geoffrey J. Butler, Clerk

APPENDIX F

BEFORE THE UTAH STATE TAX COMMISSION

UTAH STATE TAX COMMISSION, No. 1037

vs.

RICHARD D. COOPER.

TRANSCRIPT OF PROCEEDINGS
(Morning Session)

EXCERPT, Page 7, line 5

(By Mr. Cooper):...the amount of the recomputed income tax liability described as estimated is not substantiated, as I see it, as required by law with supporting evidence in the preparation. That is my first point — that these estimates are not supported with adequate preparation.

(Line 25, Mr. Cooper): I am also rely upon the State Commission Code of Administrative Procedures, 1967,...

EXCERPT, Page 8, line 9

(By Mr. Cooper):...and this is official notice -- commission shall take official notice (of) the laws of the United States, the laws of the State of Utah....These are basic.

May I ask that all of the correspondence that we have made in this matter be made a part of the official record of the court of review, if such a thing is necessary?

CHAIRMAN HOLMAN: Yes.

DEDICATION

In humility and pursuant to the grievances herein, I therefore importune at the feet of the judge for relief and justice -- not for myself, but for my posterity -- and should I not importune, I fear that the "due-process" which I received should be as a type and a shawdow of things which would come unto them.

I therefore dedicate and submit this Petition unto the glory of God, in memory of our God, our religion, and freedom, and our peace, our wives, and our children pursuant to hope for everlasting righteous dominion among men and hereby acknowledge with a grateful heart, to those who have held the light that I might see clearer....brothers Owen, Cooley, Gubler, Ellsworth, Hoopes, Johnston, Grismore, Clark, LeCates, Benson, Mason, McKay, Brown, Wilcox, Harmon, Mann, Ferguson, Smith and many other humble followers of Christ.

Richard D. Cooper

Richard D. Cooper